

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

**SHELBY COUNTY HEALTH CARE
CORPORATION d/b/a REGIONAL
MEDICAL CENTER,**

Plaintiff,

v.

**HAROLD SMITH, VELMA SMITH,
WILLIAM H. McDONALD,
ASSOCIATE NATURAL GAS,
STATE FARM INSURANCE
COMPANY, JOHN (SONNY) A.
WEEKS and BETTY J. WEEKS d/b/a
WEEKS APARTMENTS and HOME
INSURANCE COVERAGE,**

Defendants.

No. 01-2887-DV

ORDER GRANTING DEFENDANTS WEEKS' MOTION TO DISMISS

This matter is before the Court on defendants John A. Weeks and Betty J. Weeks (collectively, "Weeks")'s motion to dismiss plaintiff's claim, on the ground that the Court lacks personal jurisdiction over defendants. For the reasons stated herein, defendants' motion is **GRANTED**, and plaintiff's claims as to defendants Weeks are **DISMISSED**.

I. Factual Background

For the purposes of the instant motion only, the following facts are taken as true. In fall of 1992, plaintiff incurred expenses in excess of \$96,000 for medical services provided to decedent Steven L. Smith, a resident of Missouri. On November 23, 1992, defendant Velma Smith, mother to decedent, granted a lien to plaintiff on “any recovery, judgement or payment of settlement” due or payable to decedent or his estate. (Compl. at Ex. “B”).

On January 12, 1993, plaintiff filed an Affidavit for Hospital lien in the Circuit Court of Tennessee for the Thirteenth Judicial District, and issued notice to defendants. Subsequently, defendants Harold and Velma Smith (collectively “Smiths”) filed a wrongful death suit in Missouri against, among others, the Weeks. On October 14, 1996 defendant McDonald, on behalf of defendants Smith, issued a letter to plaintiff acknowledging the lien and assuring its payment. (Compl. at Ex. “F”). On June 13, 2000, the Weeks and Smiths entered a settlement agreement in satisfaction of the wrongful death claim.

On October 31, 2001, plaintiff filed suit in this Court, contending that the Missouri settlement between the defendants constituted breach of contract and impairment of lien pursuant Tenn. Code Ann. §29-22-104. On March 6, 2002, defendants Weeks filed a motion to dismiss plaintiff’s claims, on the ground that the Court lacked personal jurisdiction over defendants.

II. Standards of Law

Rule 12(b)(2) of the Federal Rules of Civil Procedure provides that dismissal is proper if there exists a “lack of jurisdiction over the person.” Fed. R. Civ. P. 12(b)(2). The burden of establishing the existence of personal jurisdiction is borne by the party bringing the lawsuit. International Tech. Consultants, Inc. v. Euroglas S.A., 107 F.3d 386, 391 (6th Cir. 1997).

In the absence of an evidentiary hearing, the court must view the evidence in the light most favorable to the plaintiff. Nationwide Mut. Ins. Co. v. Tryg Int'l Ins. Co., Ltd., 91 F.3d 790, 793 (6th Cir. 1996). Thus, dismissal of the instant case is appropriate only if “all the specific facts which the plaintiff . . . alleges collectively fail to state a prima facie case for jurisdiction.” CompuServe, Inc. v. Patterson, 89 F.3d 1257, 1262 (6th Cir. 1996).

In diversity cases, a federal court is to apply the law of the forum state in which it sits to determine whether personal jurisdiction is appropriate. The court may maintain jurisdiction over a non-resident defendant only in accordance with the forum state's long-arm statute and the limitations of the Due Process Clause of the Constitution. Reynolds v. Int'l Amateur Athletic Fed'n, 23 F.3d 1110, 1115 (6th Cir.), cert. denied, 513 U.S. 962, 115 S. Ct. 423, 130 L. Ed. 2d 338 (1994); Proctor & Gamble Cellulose Co. v. Viskoza-Loznica, 33 F. Supp. 2d 644, 660 (W.D. Tenn. 1998).

The jurisdictional limits of the Tennessee long-arm statute, codified at Tennessee Code Annotated §§ 20-2-214, have been interpreted as identical to those imposed by the Due Process Clause. Payne v. Motorists' Mut. Ins. Cos., 4 F.3d 452, 455 (6th Cir. 1993). Accordingly, **the court “need only determine whether the assertion of personal jurisdiction . . . violates constitutional due process.”** Aristech Chem. Int'l Ltd., 138 F.3d at 627 (quoting Nationwide Mut. Ins. Co., 91 F.3d at 793).

Pursuant to the Constitution, personal jurisdiction over a defendant stems from certain “minimum contacts” with the forum state such that maintenance of the suit does not offend “traditional notions of fair play and substantial justice.” International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S. Ct. 154, 158, 90 L. Ed. 95 (1945). Moreover, personal jurisdiction may be general or specific, depending on the type of minimum contacts present in the case. Id.

General jurisdiction exists when a defendant has continuous and systematic contacts with the forum state sufficient to justify the state's exercise of judicial power with respect to any and all claims. Specific jurisdiction, in contrast, subjects the defendant to suit in the forum state only on claims that arise out of or relate to a defendant's contacts with the forum.

Aristech Chem Int'l Ltd., 138 F.3d at 627 (internal quotations and citations omitted).

III. Discussion

_____ In the instant case, because plaintiff contends that its claim arises out of defendants’ contact with the State of Tennessee, the Court decides whether it may exercise specific jurisdiction.

_____ The Sixth Circuit has established three criteria to be used by a court in determining whether specific jurisdiction exists. First, the defendant must purposefully avail himself of the privilege of acting in the forum state or causing a consequence in the forum state. Second, the cause of action must arise from the defendant's activities there. Finally, the acts of the defendant or consequences caused by the defendant must have a substantial enough connection with the forum state to make the exercise of jurisdiction over the defendant reasonable. See Southern Mach. Co., Inc. v. Mohasco Indus., Inc., 401 F.2d 374, 381 (6th Cir. 1968); Reynolds, 23 F.3d at 1116.

_____ In the instant motion, plaintiff contends that because no consideration was given to its Tennessee hospital lien, the Missouri settlement agreement between the Weeks and defendants Smith and McDonald was unlawful. Moreover, because plaintiff is a Tennessee corporation, plaintiff contends that the Weeks' intentionally caused an unlawful consequence in the State of Tennessee. The Court disagrees.

_____ The "'sine qua non' of personal jurisdiction is the purposeful availment factor." Dean v. Motel 6 Operating L.P., 134 F.3d 1269, 1273 (6th Cir. 1998). The "purposeful availment" element is satisfied

when the defendant's contacts with the forum state "proximately result from actions by the defendant himself that create a 'substantial connection' with the forum State," and when the defendant's conduct and connection with the forum are such that he "should reasonably anticipate being haled into court there."

CompuServe, Inc., 89 F.3d at 1263 (quoting Burger King Corp. v. Rudzewicz, 471 U.S. 462, 474-75, 105 S. Ct. 2174, 2183-84, 85 L. Ed. 2d 528 (1985))

The purposeful availment requirement prevents a defendant from being haled into a jurisdiction on the basis of "random," "fortuitous," or "attenuated" contacts. Id. A defendant's physical presence in the forum state is not required for the purposeful availment element to be satisfied. Id.

_____ In the instant case, the record before the Court indicates that certain actions of defendants in Missouri militated to the detriment of plaintiff in the State of Tennessee. However, nothing in the record establishes a purposeful or substantial connection between defendants' actions and plaintiff's claims. Moreover, there is no evidence or allegation that defendants should have anticipated that their actions with respect to other Missouri residents, in matters governed by Missouri law, would cause them to be haled into a

Tennessee court. The only association between defendants and plaintiff was the tenuous nexus of their respective dealings with defendants Smith and McDonald.

Therefore, taking the allegations of the complaint as true, because the record fails to establish that defendants created a substantial connection with the State of Tennessee, the Court finds that plaintiff fails to allege sufficient facts to establish personal jurisdiction. Accordingly, defendants' motion to dismiss plaintiff's claims on that ground is GRANTED, and plaintiff's claims as to defendants Weeks are DISMISSED.

IV. Conclusion

For the foregoing reasons, defendants' motion to dismiss is GRANTED, and plaintiff's claims as to defendants Weeks are DISMISSED.

IT IS SO ORDERED this _____ day of _____, 2002

BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE